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(Head notes prepared by M. P. Burks, State Reporter.)

ECKLES'S ADM'X v. NORFOLK & W. R. CO.*—Decided at Wytheville, July 30, 1896.—*Buchanan, J:*

1. RAILROADS—*Fellow-servants—Engineer and brakeman.* A brakeman of a shifting crew in a railroad yard, or a conductor of such crew voluntarily acting as brakeman, is a fellow-servant of the engineer and fireman of the crew, and cannot recover of the company for an injury inflicted through their negligence.

2. PLEADING—*Allegation and proof—Master and servant—Incompetent servant—Defective machinery.* A servant cannot recover damages of his master for an injury inflicted on him in consequence of the incompetency of a fellow-servant, or of defective machinery and appliances, in the absence of any allegation in the declaration of such a cause of action. The plaintiff cannot allege one cause of action in his declaration, and prove another. The object of the declaration is to set forth the facts of the case so that they may be understood by the defendant who is to answer them, by the jury which is to try the case, and by the court which is to enter judgment.

3. MASTER AND SERVANT—*Voluntary exposure of servant.* A servant cannot recover of the master damages for a personal injury inflicted on him in consequence of his voluntary exposure of himself in a position of danger, not in the line of his duty.

NEW SOUTH BUILDING & LOAN ASSOCIATION AND OTHERS v. REED.Decided at Richmond, September 15, 1898.—*Harrison, J:*

1. JUDGMENTS—*Relate to first day of term—Deeds of trust recorded during term.* The judgments asserted in this cause relate back to the first day of the term of the court at which they were rendered, and are of superior dignity to a deed of trust recorded during the term, though before the day on which the judgments were actually rendered.

2. APPEAL AND ERROR—*Subrogation—Claim first asserted in appellate court.* A claim to be subrogated to the rights of a lien creditor, not made in the pleadings, cannot be asserted in this court for the first time.

3. VOLUNTARY DEEDS—*Subsequent creditors—Fraud.* In the absence of fraud, a merely voluntary deed will not be set aside at the instance of subsequent creditors of the grantor.

4. SEPARATE ESTATES—*Improvements by insolvent husband.* Improvements put upon the separate estate of a married woman by an insolvent husband, in fraud of his creditors, may be followed in her hands by such creditors and the separate estate charged with the value of such improvements.

5. SEPARATE ESTATES—*Use by husband—Loans—Rights of creditors of insolvent husband.* If a wife permit funds which constitute her separate estate to pass into

* Recently directed to be reported.